

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

CHARLES WILLIAM CHAFFIN,

Petitioner,

v.

CIVIL ACTION NO. 2:08-00130

DAVID BALLARD, Warden,
Mount Olive Correctional Complex,

Respondent.

MEMORANDUM OPINION AND ORDER

By Standing Order entered August 1, 2006, and filed in this case on February 26, 2008, this matter was referred to United States Magistrate Judge Mary E. Stanley. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge Stanley to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge Stanley submitted her Proposed Findings and Recommendation ("PF & R") on October 8, 2008, recommending that this court grant respondent's Motion to Dismiss Petition for Failure to Exhaust State Remedies (Doc. No. 11) as to Ground Four (lack of jurisdiction), only; deny petitioner's Motion to Hold Federal Habeas Corpus Petition in Abeyance (Doc. No. 13); and leave this matter referred to the magistrate judge for further proceedings. (Doc. No. 16 at 12.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge Stanley's PF & R.

Neither party filed objections to the magistrate judge's proposed findings, and the failure to file objections within the appropriate time frame constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Having reviewed the Proposed Findings and Recommendation filed by Magistrate Judge Stanley, the court (1) **CONFIRMS AND ACCEPTS** the magistrate judge's findings (Doc. No. 16); (2) **FINDS** that Ground Four of the 2254 petition is unexhausted; (3) **FINDS** that petitioner has not demonstrated good cause for his failure to first present his jurisdiction claim in state court, and that a stay-and-abeyance is not appropriate in this matter; (4) **GRANTS** respondent's Motion to Dismiss (Doc. No. 11) as to Ground Four (lack of jurisdiction), only; (5) **DENIES** petitioner's Motion to Hold Federal Habeas Corpus Petition in Abeyance (Doc. No. 13); and (6) leaves in place the referral of this matter to Magistrate Judge Stanley for additional proceedings as detailed in the PF & R (Doc. No. 16 at 12).

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to Magistrate Judge Mary E. Stanley, to petitioner, and to all counsel of record.

It is **SO ORDERED** this 30th day of October, 2008.

ENTER:



David A. Faber
United States District Judge